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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/020,062

10/30/2001

John W. Linebarger

1458

9876

21396

7590

08/21/2006

Sprint

6391 SPRINT PARKWAY

KSOPHT0101-Z2100

OVERLAND PARK, KS 66251-2100

EXAMINER

HOANG, THAI D

ART UNIT

PAPER NUMBER

2616

DATE MAILED: 08/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/020,062	<b>Applicant(s)</b> LINEBARGER ET AL.	
	<b>Examiner</b> Thai D. Hoang	<b>Art Unit</b> 2616	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 02 August 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: \_\_\_\_\_.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
 13. ☐ Other: \_\_\_\_\_.



DORIS H. TO  
SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because:

Page 10 of the remarks, Applicants argued, "[E]ach of the transmitter and receiver of Smith only provide for a single transmitter or receiver capable of switching between narrowband and spread-spectrum modes, not two separate transceivers, as provided for in claims 1 and 41." Examiner respectfully disagrees. Although the transmitter and the receiver are shown separately in figures 2 and 3, but they are integrated in a single telephone handset 410 (figure 8), which transmits and receives signal in licensed and unlicensed spectrum band. See abstract, fig. 2-3 and 8-10, col. 3, lines 8-18 of the reference, the telephone handset 410 comprises a narrowband modulator 113 for transmitting unlicensed spectrum band and a narrowband demodulator 213 for receiving unlicensed spectrum band. It indicates that the telephone handset 410 comprises an unlicensed spectrum transceiver. Similarly, telephone handset 410 comprises a spread spectrum modulator 111 for transmitting licensed spectrum band and a spread spectrum despread 215 for receiving licensed spectrum band. It indicates that the telephone handset 410 comprises a licensed spectrum transceiver. Thus, telephone handset 410 comprises two separate transceivers: licensed transceiver and unlicensed transceiver.

Also, page 10, Applicants argued, "the Smith transmitter and receiver can only communicate in either narrowband or spread-spectrum mode at any particular point in time." Examiner believes that this argument is not relevant because claims 1 and 14 do not recite both licensed spectrum and unlicensed spectrum are used for communicating at the same time.

Regarding "Spectrum Selector", page 11 of the remarks, Applicants argued, "the mode controller 103 selects between narrowband and spread-spectrum modes in both the transmitter and receiver. (Column 6, lines 47-55; and column 7, lines 37-50.) Thus, the mode controller 103 is not configured to select a licensed transceiver or an unlicensed transceiver, as set forth in claims 1 and 41." Examiner respectfully disagrees. As explained above, the telephone handset 410 comprises two separate transceivers: licensed transceiver and unlicensed transceiver. For transmitting, the mode controller 103 controls a mode select switch 104 which directs the processed information signal to the narrowband modulator 113 (unlicensed spectrum) or the spread-spectrum modulator 111 (licensed spectrum). See fig. 2, col. 6, lines 52-62. For receiving, the mode controller 103 is used to select reception of narrowband (unlicensed spectrum) or spread-spectrum modulation (licensed spectrum). See fig. 3, col. 7, lines 37-39.